(3)

C.S. 1002 (1)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

W.P. No. 1859 **/2004**

PETITIONER

Meghraj Dewangan
Aged about 20 years
S/O Shri Nandkumar
Dewangan
Ward No. 8 Rani Road,
Champa District Janjgir-
Champa (Chhattisgarh)

P. R. No. 1886/04
Presented by Shri M. Vels Pandey
dated 5-7-04

VERSUS

RESPONDENTS

1. State of Chhattisgarh
Through the Secretary
Department of Industries/
Rural Industries, D.K.S.
Bhawan, Mantralaya,
Raipur (Chhattisgarh)

2. Director
Gramodyog Sanchalnalya
(Handloom), Sonakhan
Bhawan, Ring Road, Raipur
(Chhattisgarh)

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Clerk to A.G. Bilaspur

PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRITS OF MANDAMUS AND CERTIORARI AND FOR OTHER SUITABLE WRITS AND DIRECTIONS:-

1. **PARTICULARS OF THE PETITIONER:**

As stated above in the cause title.

2. **PARTICULARS OF THE RESPONDENTS:**

(65)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.1859 of 2004

Meghraj Dewangan

- Versus -

State of Chhattisgarh & another

POST FOR ORDER ON 12th JULY, 2004

Sd/-
L.C.BHADOO
Judge

12.7.2004

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.1859 of 2004

Meghraj Dewangan

- Versus -

State of Chhattisgarh & another

Present: -

Mr. Kanak Tiwari, Advocate: For the petitioner.

Mr. U.N.S. Deo, Govt. Advocate: For the State/respondents.

O R D E R

(Passed on 12th July, 2004)

As per L.C. Bhadoo J.

By this petition filed under Article 226 of the Constitution of India, the petitioner has challenged the legality, validity, propriety and correctness of the action of the respondents whereby the petitioner's request to allow him to appear in the interview for selection in three years Handloom Technology Course after 16-6-2004 has been turned down.

(2) The facts leading to filing of this petition, as mentioned in the petition, are that respondent No.2 issued an advertisement inviting applications from suitable candidates latest by 8-6-2004 for admission to first year of three years course in the subject of Handloom Technology, which was to commence from 9th July 2004. In pursuance of the said advertisement the petitioner being qualified applied for the said course. The petitioner was waiting for interview and he received interview call letter on 16-6-2004 at 2 pm by post. As per the interview call letter he was required to appear in the office of respondent No.2, before the Interview Board on

16-6-2004 at 11 am. As the petitioner received the interview call letter at 2 pm, therefore, it was not possible for him to appear before the Interview Board at 11 am. Accordingly, the petitioner sent a communication through fax to respondent No.2 at 2:30 pm requesting therein to call him for interview on a future date and he also sent a letter to respondent No.2 raising his grievances. But, the request of the petitioner was not acceded by respondent No.2 on the ground that by the time the request of the petitioner was received through fax, the interview was already over.

(3) The petitioner's further case is that the career of the petitioner was ruined and jeopardized for no fault on his part. Out of four selected candidates one candidate was already over age and one candidate was selected from non-weaver family, who could not be given preference in accordance with the rules made by the respondent No.1. The petitioner being qualified for the said selection is a bonafide resident of the State of Chhattisgarh and also belongs to the weaver community, as also is more academically qualified in comparison to the candidates selected. The respondents were obliged to send information/communication to the candidates by registered post under some acknowledgement and the same having not been adopted; the communication was deliberated on malafides against the petitioner so that he being more qualified may not be able to attend the interview. On account of respondents' negligence the petitioner has suffered an irreparable loss and the right of the petitioner to be selected for the aforesaid course is integrally connected with Articles 14 and 21 of the Constitution of India and in the given facts and circumstances for no fault of the petitioner, he cannot be punished by the respondents. Ultimately, it has been prayed that a writ of certiorari be issued for quashing the selection made by the respondents for the aforesaid 3 years course of Handloom Technology and writ of mandamus be issued for directing the respondents to call the petitioner for interview.

(4) Return has been filed on behalf of the respondents, in which, issuance of advertisement for inviting applications and receiving of the application of the petitioner is admitted and it has further been mentioned that in all 11 applications were received including the petitioner. The applications were scrutinized and in all 9 candidates including the petitioner were short-listed for interview. The interview letters were dispatched on 11-6-2004 by speed post, the most efficient and reliable way by which the candidates could have been called for interview. As this was the only reliable mode for intimating the candidates to be called for interview especially in view of the circumstances that none of the candidates who had applied had any E-Mail address or would be expected to access the Internet so as to be informed. As is the assurance given by Speed Post mode of service in the Department of Post & Telegraph that delivery, if sent, through Speed Post mode would be effected within a period of 3 days anywhere in the country and, therefore, as would be reasonably expected it was expected by the answering respondents that all the selected candidates called for interview would be intimated well before 16-6-2004 on which date the interview was to be held.

(5) However, due to lapse on the part of much touted quick mode of speed post service, on the eventful date of interview only 6 candidates reported out of 9 candidates called for interview. As scheduled, the process of interview started at 11 am on 16-6-2004 and after interviewing all the 6 candidates who had appeared for interview, interview was completed at 1 pm. While conducting the interview, the norms and guidelines laid down as per Annexure-R/1 whereby preference was to be given to candidates from Weaver community was kept in mind as well as the guidelines for selection issued by document Annexure-R/1, and also as per existing policy of the State Government and ultimately out of 6 candidates, 4 candidates were selected and two candidates were kept in the waiting list. It has further been mentioned that interview date could have been relaxed, for the reason that strict guidelines were issued by the Central Government that after the

completion of selection process, if the panel of names was not received by 20-6-2004 from the State of Chhattisgarh, then the quota allotted to the State of Chhattisgarh would be re-allotted to the candidates from other States. Therefore, after selecting 4 candidates and keeping 2 in the waiting list, the panel of names was dispatched to the Director, Indian Institute of Handloom Technology, Jodhpur on 16-6-2004 itself vide dispatch No.861.

(6) The fax message (Annexure-P/5) sent by the petitioner was received only at 2.34 AN much after the completion of interview and after the proceedings of the Selection Committee was completed. Thus, the Selection Committee could not, in any way, all over start the process of interview again or extend it especially in view of the instructions issued by the Indian Institute of Handloom Technology. The entire selection was impartial and conducted according to the norms whereby only eligible candidates were selected giving preference to the Weaver community, which is evident from perusal of the chart (Annexure-R/5). The petitioner has no cause of action against the answering respondents. In fact, cause of action of the petitioner, if any, would lie against the Department of Posts and Telegraphs under whom the mode of speed post delivery is being done, and who claim that they would deliver the letters etc. anywhere in the country within 3 days. Therefore, there was no lapse on the part of the answering respondents. The petitioner has no locus standi to challenge the selection of the candidates who have been short-listed having been found eligible for participating in Diploma Course of Indian Institute of Handloom Technology. The petitioner is not entitled to invoke the extraordinary writ jurisdiction, as the proper remedy available to the petitioner would be to claim damages from the Department of Posts and Telegraphs through a civil suit.

(7) The matter was taken up for hearing on admission and interim relief on 6-7-2004 and on that day it was directed to keep one seat vacant till the next date of hearing.

(8) I have heard the learned counsel for the parties.

(9) Learned counsel for the petitioner submitted that the respondents deliberately sent interview call letter with such a short notice so as to ensure that all the candidates should not receive call letters in time and not to give them sufficient time to appear before the Interview Board. He further submitted that the Ministry of Textiles sent their communication on 6-4-2004 intimating the respondents for selection of 4 candidates from the State of Chhattisgarh, therefore, the respondents had sufficient time with them to issue an advertisement inviting applications and conduct interview within a stipulated time. But, they issued advertisement only on 26-5-2004 through the newspaper "Danik Bhaskar" and the last date for receiving the applications was fixed 8-6-2004. The respondents were not left with sufficient time for issuing call letters and intimating the applicants to appear before the Interview Board. While fixing the schedule, the respondents ought to have at-least kept minimum two week's time for intimating the candidates to appear before the Interview Board. In this case, call letters were dispatched on 11-6-2004, Saturday and Sunday being a holiday and interview was fixed on 16-6-2004, therefore, only 4 days' time was left in between which cannot be said to be a reasonable time for intimating the candidates to appear before the Interview Board. Therefore, faulty procedure was adopted by the respondents.

(10) Since, this short time was left, therefore, the respondents ought to have followed the procedure for intimating the candidates to appear before the Board by adopting the mode of telegram, fax, telephone, T.V., E-mail or publication in the newspaper, as has been held by this Court in the Judgment dated 21st November 2003 in the Writ Petition No.3243/2003. Learned counsel for the petitioner further submitted that as per Annexure-R/5 the list of the candidates who were required to appear before the Interview Board, out of the 9 candidates, 3 candidates inclusive of the petitioner were from Champa town and out of these three persons, none of the candidates appeared before the Interview Board, as they were not intimated timely. This fact itself shows that there was some deliberate

attempt on the part of the respondents to send interview call letters of short duration to meet their design and eventually one Satyaprakash was selected by the respondents, who was already over age and even he was given preference over the eligible candidates. This fact itself shows the manner in which the interview was conducted and preference was given to ineligible candidate over the eligible candidates. He further submitted that one Shankar Kumar Kaushal was also selected, even though he was O.B.C. candidate but he was not from the Weavers community whereas, the petitioner and two other candidates who had not appeared before the Interview Board were not only O.B.C. but also from the Weavers community, therefore, they were entitled for preference as against selected candidate Mr. Kaushal and the petitioner was more meritorious then at-least 2 candidates who were selected and put in the panel.

(11) On the other hand, learned counsel for the respondents submitted that since the respondents were required to send selection list so as to reach Jodhpur by 20th June 2004, therefore, this course was adopted. As per the norms of the Telegraphs and Post Office Department the speed post letters are delivered within 3 days, therefore, 4 days' time was allowed to the candidates for intimating them and appearing before the Interview Board. Therefore, respondents cannot be held negligent in this manner. The other allegations of the counsel for the petitioner are not correct and are not based on any plausible grounds.

(12) Having heard the learned counsel for the parties, I have perused the record. A perusal of the list (Annexure-R/5) submitted by the respondents reveals that 9 candidates were short-listed for calling them to appear before the Interview Board and out of these, the candidate No.9 namely, Satyaprakash was obviously over age and this has been admitted by the respondents in their return. Therefore, he was not eligible for interview, even then he was selected. This fact itself speaks much about the manner in which the selection of candidates was made. Out of the remaining 8

candidates, as per the guidelines, the petitioner was entitled for preference over the selected candidate Shankar Kumar Kaushal for the reason that Shankar Kumar Kaushal was only O.B.C. candidate, whereas, the petitioner was not only O.B.C. but also from the Weavers community and as per guideline No.4 of the advertisement, it was made clear that in the matter of selection, preference should be given to candidates belonging to hereditary weavers families or those who are in the profession. Looking to the percentage of the petitioner he was more meritorious then the two candidates selected.

(13) Now, coming to the question about the mode of intimation as has been mentioned in the previous part of this order, the Ministry sent their intimation to the respondents vide letter dated 6-4-2004 i.e. 2 months 14 days before the last date on which date the selection list was to reach to Indian Institute of Handloom Technology, Jodhpur, therefore, sufficient time was with the respondents to invite applications and conduct interview. However, reason best known to the respondents the advertisement for inviting applications was issued in the newspaper namely, "Danik Bhaskar" only on 26-5-2004 and after short listing the eligible candidates, interview call letters were sent only on 11-6-2004 with the short notice of 4 days' time to appear before the Interview Board. This time, by any stretch of imagination, cannot be said to be a sufficient time for intimating any candidate to appear before the Interview Board and that too intimating by post and further that the petitioner was not the only candidate who had not received the communication in time, but all the three candidates from Champa town had not received communication in time, therefore, they were not able to appear before the Interview Board. This fact itself makes the process of selection faulty and making the candidates to suffer loss without any fault on their part. Therefore, respondents were not careful in fixing the date of interview and mode of communication for intimating the candidates to appear before the Interview Board looking to the short time. In the normal circumstances, when the candidate is called for interview, normally the interview call letter is sent at-least 30 days before the date of interview, but even in emergency

this period cannot be shorten by less than 10 days time looking to the distance of the place where the candidate is residing so as to give him a sufficient time to receive the intimation, prepare himself and journey time to appear before the Interview Board. As a last resort, if at all there was any emergency for the respondent and they were not having that much of time at their command, then the respondents ought to have had ensured that all the candidates are intimated by any of the following modes in addition to usual mode:

(i) By publishing in the newspaper;

(ii) Through telephone;

(iii) Fax;

(iv) E-mail and

(v) Television etc.

whichever mode was convenient to the respondents. It was the responsibility of respondents to ensure that all candidates are informed and have sufficient time to reach and appear before Interview Board.

(14) This is not first instance in this State where such a lapse has occurred rather it has been noticed and observed earlier also that the Government Machinery in the State of Chhattisgarh is in the habit of committing such lapse for the reasons best known to them. This is a backward State where the mode of communication and the Government Machinery is not that efficient in comparison to other developed States. Particularly the citizens of this State who are residing in the rural areas are very backward and they are not vigilant about their rights, as the citizens of the other part of the country and that is why the Government Officials are taking the system for ride without inviting any administrative action against them. This Court earlier also in its order dated 21st November 2003 passed in W.P. No.3243/2003 in the matter of medical admission in **Gitika Shankar Mishra Versus State of Chhattisgarh & Others** expressed anguish and concern and held that:

"Before parting with the order I deem it appropriate to observe that this is not the first case where the faulty procedure for communicating the students to appear for counseling has been challenged. Such cases are coming up frequently before this Court. Therefore, all the Universities and the concerned authorities are expected to devise a method for communication of notice inviting eligible candidates to appear for counseling and to maintain transparency in the admission process so that no grievance is raised by any candidate. For example in this connection for the first counseling the procedure which is in vogue can be continued but where the second and further counseling is required to be conducted and short time is left for communication of notice as few number of candidates are required to be communicated, therefore, the authorities can adopt other methods of communication i.e. by sending telegram on their given address, through fax, telephone, T.V. or E-mail address in order to avoid complications and unnecessary litigation. In order to adopt this procedure at the time of inviting applications the candidates can be asked to give their telephone numbers, fax number, E-mail numbers and correct telegram address in the application form."

In this case, the petitioner received call letter for interview only on 16-6-2004 at 2 pm whereas, he was required to appear before the Interview Board at 11 am on the same day, therefore, he immediately intimated the respondents through fax that he has received the letter at 2 pm. Apart from that, two other candidates of the same place could not appear before Interview Board on account of non-receipt of the interview call letter in time. Therefore, the action of the respondents, in any manner, cannot be

said to be just, fair and reasonable and the petitioner has been denied his just right by sheer negligence on the part of respondents officials.

(15) In the result, the writ petition is allowed. The respondents are directed to call the petitioner to appear before the Interview Board on a date to be fixed by the respondents in the week commencing from 19th July 2004, after conducting the interview of the petitioner, prepare the merit list and to take further action accordingly.

Sd/-
L.C.BHADOO
Judge

12-7-2004

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